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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/890,154

10/23/2001

Louis Lagler

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04/13/2004

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/890,154

Applicant(s)

LAGLER ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-46 is/are pending in the application.
- 4a) Of the above claim(s) 35-37 and 44-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10, 13-18, 20-34 and 38-43 is/are rejected.
- 7) ☒ Claim(s) 11, 12 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Receipt of applicant's evidence of a preliminary amended previously filed along with the preliminary amendment filed December 14, 2001 is acknowledged. In view thereof, a non-action on the merits follows.

### ***Election/Restrictions***

2. Newly submitted claims 35-37 and 44-46 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the process of forming the closure was not previously set forth in the claims. Moreover, a different process can be used to mold the closure wherein the closure parts can be molded separately and then secured together or the closure can be molded in an open position.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 35-37 and 44-46 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Drawings***

3. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated as set forth in the specification, as originally filed, at page 5 lines 20-22. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

4. Claims 1 and 38 are objected to because of the following informalities: in claim 1, line 9, the comma after "another" should be deleted and in claim 38, line 9, -- a -- should be inserted before "first angle". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. Claims 21-34 and 38-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Claim 21 recites the limitation "the contained" in line 4. There is insufficient antecedent basis for this limitation in the claim.

The structure of the closure is not clearly set forth in the claims. In claim 21, it is unclear if "at least two stable positions and unstable positions" is intended to set forth two stable positions and two unstable positions or two total positions.

It is unclear what is intended by "being from the mould" in claim 21, line 17.

Claim 38 recites the limitation "said pair of defining" in line 11. There is insufficient antecedent basis for this limitation in the claim.

The omitted text in claim 38, line 11 renders the claim indefinite since one of ordinary skill in the art would not be apprised of the invention.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1,2, 6-10,13,14,15,17, and 38-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Nozawa (US 5,148,912).

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The closure of Nozawa illustrated in figures 6-9 anticipates the claimed closure. It is noted that the second closure part is stable in the open and closed positions and the hinge planes are inclined relative to a closure axis (to the degree "a closure axis" is set forth).

It is noted the limitation of the hinge connections being accessible in the mold from the inside of the closure and from outside the closure does not structurally limit the finished claimed product.

***Claim Rejections - 35 USC § 103***

8. Claims 3,4, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nozawa in view of Dubach (US 5,392,938).

Nozawa teaches the claimed closure except for at least one element initially connecting the two closure parts in the closed position.

Dubach teaches it is known to initially secure two hinged closure parts together. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an element to initially secure the two closure parts together in a closed position. Doing so provides a tamper-indicating arrangement and ensures the integrity of the contained product prior to first use.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nozawa in view of Altherr (US 5,270,011).

Nozawa teaches the claimed closure except for a thickened edge of an inner tubular element.

Altherr teaches it is known to provide a thickened edge formed by a bead on a lower edge of an inner tubular element for sealing an associated opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a thickened edge formed by a bead on a lower edge of an inner

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tubular element. Doing so allows for sealing an associated opening and accounts for imperfections in the edge of the opening.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nozawa in view of Gach et al. (US 4,826,026).

Nozawa teaches the claimed closure except for a catch.

Gach teaches it is known to provide a catch between the closure parts to prevent unintentional opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a catch to the closure of Nozawa. Doing so allows for unintentional opening.

#### ***Allowable Subject Matter***

11. Claims 21-34 appear to be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

12. Claim 11, 12, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

13. Applicant's arguments filed September 23, 2003 have been fully considered but they are not persuasive.

Regarding the drawings, applicant discloses drawing figure "schematically shows a closure according to the prior art". This objection to the drawings is final. A proposed drawing correction or corrected drawings are **required** in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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Regarding the remarks directed to the inclination of the planes of the hinge elements at page 34, the angle of the planes formed by the hinge elements of Nozawa is inclined relative to a closure axis. Wherein the claims do not set forth the direction of the closure axis and/or inclination of the planes, Nozawa anticipates this limitation since an angle of inclination can be greater than zero degrees and less than 360 degrees relative to an axis.

Regarding the molding process and the remarks at page 35, product-by-process claims are not limited to the manipulation of the recited steps, only the structure implied by the steps. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted)

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brach et al. (US 5,335,802) teaches it is known to mold a closure having a cap and base in the closed position.

15. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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16. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

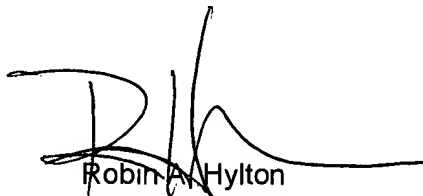
17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
April 2, 2004

  
Robin A. Hylton  
Primary Examiner  
GAU 3727